

EXHIBIT A

EXHIBIT A

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6
7 Attorneys for Plaintiffs

8 UNITED STATES DISTRICT COURT

9 DISTRICT OF NEVADA

10 —ooOoo—

11 3685 SAN FERNANDO LENDERS,
LLC, a Nevada limited liability company,
12 5055 COLLWOOD LENDERS, LLC, a
Nevada limited liability company, 6425
13 GESS LENDERS, LLC, a Nevada limited
liability company, 60th STREET
14 VENTURES LENDERS, LLC, a Nevada
limited liability company, AMESBURY
15 HATTERS PT LENDERS, LLC, a Nevada
limited liability company, ANCHOR B
16 LENDERS, LLC, a Nevada limited
liability company, BAR-USA LENDERS,
17 LLC, a Nevada limited liability company,
BAY POMPAÑO LENDERS, LLC, a
18 Nevada limited liability company,
BINFORD LENDERS, LLC, a Nevada
19 limited liability company, BROOKMERE
LENDERS, LLC, a Nevada limited
20 liability company, BUNDY CANYON 2.5
LENDERS, LLC, a Nevada limited
21 liability company, BUNDY CANYON 5.0
LENDERS, LLC, a Nevada limited
22 liability company, BUNDY CANYON
5.725 LENDERS, LLC, a Nevada limited
23 liability company, BUNDY CANYON 7.5
LENDERS, LLC, a Nevada limited
24 liability company, CABERNET
LENDERS, LLC, a Nevada limited
25 liability company, CASTAIC II
LENDERS, LLC, a Nevada limited
26 liability company, CASTAIC III
LENDERS, LLC, a Nevada limited
27 liability company, CHARLEVOIX
LENDERS, LLC, a Nevada limited
28

Case No.

**COMPLAINT FOR DECLARATORY
RELIEF AND DAMAGES**

1 liability company, CLEAR CREEK
2 PLANTATION LENDERS, LLC, a
3 Nevada limited liability company, COM
4 VEST LENDERS, LLC, a Nevada limited
5 liability company, COPPER SAGE II
6 LENDERS, LLC, a Nevada limited
7 liability company, CORNMAN TOLTEC
8 LENDERS, LLC, a Nevada limited
9 liability company, DEVALLE
10 LIVINGSTON LENDERS, LLC, a
11 Nevada limited liability company, EAGLE
12 MEADOWS LENDERS, LLC, a Nevada
13 limited liability company, FIESTA
14 MURIETTA LENDERS, LLC, a Nevada
15 limited liability company, FIESTA USA
16 STONERIDGE LENDERS, LLC, a
17 Nevada limited liability company,
18 FOXHILLS 216 LENDERS, LLC, a
19 Nevada limited liability company,
20 GRAMERCY COURT LENDERS, LLC,
21 a Nevada limited liability company,
22 HARBOR GEORGETOWN LENDERS,
23 LLC, a Nevada limited liability company,
24 HESPERIA LENDERS, LLC, a Nevada
25 limited liability company, HFA
26 CLEARLAKE I LENDERS, LLC, a
Nevada limited liability company, HFA
CLEARLAKE II LENDERS, LLC, a
Nevada limited liability company,
HUNTSVILLE LENDERS, LLC, a
Nevada limited liability company, LA
HACIDENDA LENDERS, LLC, a
Nevada limited liability company, LAKE
HELEN PARTNERS LENDERS, LLC, a
Nevada limited liability company, LERIN
HILLS LENDERS, LLC, a Nevada limited
liability company, MARGARITA ANNEX
LENDERS, LLC, a Nevada limited
liability company, MARLTON SQUARE
I LENDERS, LLC, a Nevada limited
liability company, MARLTON SQUARE
II LENDERS, LLC, a Nevada limited
liability company, MOUNTAIN HOUSE-
PEGS LENDERS, LLC, a Nevada limited
liability company, OAK SHORES II,
LENDERS, LLC, a Nevada limited
liability company, OCEAN ATLANTIC
2.75 LENDERS, LLC, a Nevada limited
liability company, OCEAN ATLANTIC
9.425 LENDERS, LLC, a Nevada limited
liability company,

27

28

1 PALM HARBOR I LENDERS, LLC, a
2 Nevada limited liability company,
3 SHAMROCK TOWER LENDERS, LLC,
4 a Nevada limited liability company, SO
5 CAL LAND LENDERS, LLC, a Nevada
6 limited liability company, SVRB 2.325
7 LENDERS, LLC, a Nevada limited
8 liability company, SVRB 4.5 LENDERS,
9 LLC, a Nevada limited liability company,
10 TAPIA RANCH LENDERS, LLC, a
11 Nevada limited liability company, TEN-
12 NINETY 4.15 LENDERS, LLC, a Nevada
13 limited liability company, THE
14 GARDENS 2.425 LENDERS, LLC, a
15 Nevada limited liability company, THE
16 GARDENS LLC TSHR LENDERS, LLC,
17 a Nevada limited liability company,

18 Plaintiffs,

19 v.

20 COMPASS USA SPE, LLC, a Delaware
21 limited liability company, COMPASS
22 PARTNERS, LLC, a Delaware limited
23 liability company, DAVID BLATT, an
24 individual, and BORIS PISKUN, an
25 individual, SILAR ADVISORS, LP, a
26 Delaware limited partnership, SILAR
27 SPECIAL OPPORTUNITIES FUND, LP,
28 a Delaware limited partnership,

Defendants.

Plaintiffs, 3685 SAN FERNANDO LENDERS, LLC, a Nevada limited liability
company, 5055 COLLWOOD LENDERS, LLC, a Nevada limited liability company, 6425
GESS LENDERS, LLC, a Nevada limited liability company, 60th STREET VENTURES
LENDERS, LLC, a Nevada limited liability company, AMESBURY HATTERS PT
LENDERS, LLC, a Nevada limited liability company, ANCHOR B LENDERS, LLC, a
Nevada limited liability company, BAR-USA LENDERS, LLC, a Nevada limited liability
company, BAY POMPARNO LENDERS, LLC, a Nevada limited liability company,
BINFORD LENDERS, LLC, a Nevada limited liability company, BROOKMERE
LENDERS, LLC, a Nevada limited liability company, BUNDY CANYON 2.5 LENDERS,
LLC, a Nevada limited liability company, BUNDY CANYON 5.0 LENDERS, LLC, a

1 Nevada limited liability company, BUNDY CANYON 5.725 LENDERS, LLC, a Nevada
2 limited liability company, BUNDY CANYON 7.5 LENDERS, LLC, a Nevada limited
3 liability company, CABERNET LENDERS, LLC, a Nevada limited liability company,
4 CASTAIC II LENDERS, LLC, a Nevada limited liability company, CASTAIC III
5 LENDERS, LLC, a Nevada limited liability company, CHARLEVOIX LENDERS, LLC, a
6 Nevada limited liability company, CLEAR CREEK PLANTATION LENDERS, LLC, a
7 Nevada limited liability company, COM VEST LENDERS, LLC, a Nevada limited liability
8 company, COPPER SAGE II LENDERS, LLC, a Nevada limited liability company,
9 CORNMAN TOLTEC LENDERS, LLC, a Nevada limited liability company, DEVALLE
10 LIVINGSTON LENDERS, LLC, a Nevada limited liability company, EAGLE MEADOWS
11 LENDERS, LLC, a Nevada limited liability company, FIESTA MURIETTA LENDERS,
12 LLC, a Nevada limited liability company, FIESTA USA STONERIDGE LENDERS, LLC,
13 a Nevada limited liability company, FOXHILLS 216 LENDERS, LLC, a Nevada limited
14 liability company, GRAMERCY COURT LENDERS, LLC, a Nevada limited liability
15 company, HARBOR GEORGETOWN LENDERS, LLC, a Nevada limited liability company,
16 HESPERIA LENDERS, LLC, a Nevada limited liability company, HFA CLEARLAKE I
17 LENDERS, LLC, a Nevada limited liability company, HFA CLEARLAKE II LENDERS,
18 LLC, a Nevada limited liability company, HUNTSVILLE LENDERS, LLC, a Nevada
19 limited liability company, LA HACIDENDA LENDERS, LLC, a Nevada limited liability
20 company, LAKE HELEN PARTNERS LENDERS, LLC, a Nevada limited liability
21 company, LERIN HILLS LENDERS, LLC, a Nevada limited liability company,
22 MARGARITA ANNEX LENDERS, LLC, a Nevada limited liability company, MARLTON
23 SQUARE I LENDERS, LLC, a Nevada limited liability company, MARLTON SQUARE
24 II LENDERS, LLC, a Nevada limited liability company, MOUNTAIN HOUSE-PEGS
25 LENDERS, LLC, a Nevada limited liability company, OAK SHORES II, LENDERS, LLC,
26 a Nevada limited liability company, OCEAN ATLANTIC 2.75 LENDERS, LLC, a Nevada
27 limited liability company, OCEAN ATLANTIC 9.425 LENDERS, LLC, a Nevada limited
28 liability company, PALM HARBOR I LENDERS, LLC, a Nevada limited liability company,

1 SHAMROCK TOWER LENDERS, LLC, a Nevada limited liability company, SO CAL
2 LAND LENDERS, LLC, a Nevada limited liability company, SVRB 2.325 LENDERS, LLC,
3 a Nevada limited liability company, SVRB 4.5 LENDERS, LLC, a Nevada limited liability
4 company, TAPIA RANCH LENDERS, LLC, a Nevada limited liability company, TEN-
5 NINETY 4.15 LENDERS, LLC, a Nevada limited liability company, THE GARDENS 2.425
6 LENDERS, LLC, a Nevada limited liability company, THE GARDENS LLC TSHR
7 LENDERS, LLC, a Nevada limited liability company, (collectively the "Plaintiffs"), through
8 their counsel, The Law Offices of Alan R. Smith, hereby avers and seeks relief as set forth
9 below:

10 GENERAL AVERMENTS

11 A. Jurisdiction and Venue.

12 1. The United States District Court has subject matter jurisdiction over this action
13 pursuant to 28 U.S.C. § 1332(a).

14 2. Pursuant to 28 U.S.C. § 2201, et seq. (the Federal Declaratory Judgment Act),
15 this Court has jurisdiction to declare the rights and legal obligations of the interested parties.

16 3. Venue for this case in this district is proper pursuant to 28 U.S.C. § 1391.

17 B. The Parties.

18 4. Plaintiffs are all Nevada limited liability companies and are all direct
19 lenders/investors in certain investments made through USA Commercial Mortgage Company
20 ("USACM). These investments were in the nature of direct loans to third-party borrowers
21 secured by real property and sometimes improvements, which loans were brokered by
22 USACM. The members of the Plaintiff limited liability companies are all direct
23 lender/investors who originally invested with USACM, but assigned their interest in the loans
24 brokered by USACM to, among numerous other reasons, to consolidate and unite to protect
25 themselves and their investments from the actions of Defendants alleged herein. Plaintiffs,
26 or their predecessor in interest, are named as fractional interest beneficiaries on each
27 promissory note and deed of trust evidencing and perfecting the secured loans. Each Plaintiff
28 limited liability company is a direct lender/investor in a separate and distinct loan.

1 5. Compass USA SPE, LLC is a limited liability company organized and existing
2 under the laws of the State of Delaware, with its principal place of business in the State of
3 New York. Compass USA SPE, LLC does not maintain an office in Nevada.

4 6. Compass Partners, LLC is a limited liability company organized and existing
5 under the laws of the State of Delaware, with its principal place of business in the State of
6 New York. Compass Partners, LLC does not maintain an office in Nevada (Compass USA
7 SPE, LLC and Compass Partners, LLC shall collectively be referred to herein as "Compass")

8 7. David Blatt ("Blatt") is a resident of the State of New York and is member and
9 manager of Compass.

10 8. Boris Piskun is a resident of the State of New York and is a member and a
11 manager of Compass ("Piskun").

12 9. Compass is not registered, qualified or authorized to do business in the State
13 of Nevada.

14 10. Compass is not licensed as a Mortgage Broker or Mortgage Agent in the State
15 of Nevada and does not have an application pending to become a licensed Mortgage Broker
16 or Mortgage Agent in Nevada.

17 11. Silar Advisors, LP, is a limited partnership organized and existing under the
18 laws of the State of Delaware, with its principal place of business in the State of New York.
19 Silar Advisors, LP does not maintain an office in Nevada.

20 12. Silar Special Opportunities Fund, LP is a limited liability company organized
21 and existing under the laws of the State of Delaware, with its principal place of business in
22 the State of New York Silar Special Opportunities Fund, LP does not maintain an office in
23 Nevada (hereafter, Silar Advisors, LP, and Silar Special Opportunities Fund, LP shall
24 collectively be referred to as "Silar").

25 **C. General Background.**

26 13. USA Commercial Mortgage Company, defined above as USACM, which
27 sometimes did business under the name "USA Capital", was formed as a Nevada corporation
28 in 1989, and was in the business of underwriting, originating, brokering, funding and

1 servicing short term (typically one year or less) commercial loans primarily secured by
2 residential and commercial developments, on behalf of private investors/direct lenders.

3 14. On January 11, 1990, USACM obtained a license to act as a mortgage
4 broker/agent in the State of Nevada under Nevada Revised Statutes (NRS) Chapter 645B
5 and Nevada Administrative Code Chapter 645B (NAC).

6 15. USACM routinely advertised and promoted, through sales and marketing
7 literature, high-yielding secured investments, with no fees ever charged to investors, and
8 represented that no investors had ever lost money in their investments with USACM.

9 16. At the time USACM brokered direct loans on behalf of Plaintiffs, or their
10 predecessors in interest, USACM was operating in the State of Nevada as a licensed
11 mortgage broker/agent under NRS 645B and NAC 645B.

12 17. On April 13, 2006, USACM filed a Chapter 11 Petition for bankruptcy in the
13 Bankruptcy Court for the District of Nevada, Las Vegas, together with four other entities
14 related to USACM (hereinafter collectively referred to as "USA Bankruptcy Cases").

15 18. At the time USACM filed its bankruptcy petition, approximately 3,600
16 investors were "lenders" in one or more loan originated and serviced by USACM. These
17 3,600 investors are commonly referred to as "direct lenders."

18 19. The loans brokered by USACM on behalf of Plaintiffs are each evidenced by
19 a Promissory Note Secured By A Deed Of Trust (respectively the "Note"), which were
20 executed by third-party borrowers in favor of the Plaintiff (or their predecessor in interest)
21 and other direct lenders in each loan. All loan documents, including the Notes, expressly
22 provide that they are governed by Nevada law.

23 20. At the time USACM brokered direct loans each lender/investor and USACM
24 entered into various Loan Servicing Agreements pursuant to which USACM would service
25 the loans it brokered on behalf of Plaintiffs ("Loan Servicing Agreements"). Each Plaintiff
26 entered into a single Loan Servicing Agreement, which covered every investment made by
27 each Plaintiff with USACM. All Loan Servicing Agreements are in the same form. All Loan
28 Servicing Agreements expressly provide that they are governed by Nevada law.

1 21. At the time USACM filed its bankruptcy petition, the loan portfolio it was
2 servicing pursuant to the Loan Servicing Agreements consisted of approximately 115 loans
3 having a combined outstanding principal balance of approximately \$960 million. Most of
4 the original direct lenders invested in more than one of the serviced loans, with the being
5 approximately 3 to 4 loans for each direct lender.

6 22. On May 1, 2006, the State of Nevada, Department of Business and Industry,
7 Division of Mortgage Lending, entered a *Order Conditioning Mortgage Broker's License*
8 *and Notice of Right To Request A Hearing*, which became a *Final Order Conditioning*
9 *Mortgage Broker's License* on June 9, 2006, a copy of which is attached hereto as Exhibit
10 A, pursuant to which USACM was prohibited from making any further loans based upon
11 various violations of Nevada law.

12 23. The Commissioner for the Nevada Mortgage Lending Division, Scott Bice, has
13 described USACM as "a calculated, self serving deceptive scheme that was enacted to allow
14 the Principals to potentially profit with no risk, while astronomical risk inured to the
15 unsuspecting lenders.

16 24. During the course of its Bankruptcy Case, USACM admitted that it breached
17 the Loan Servicing Agreements, breached its fiduciary duties, and violated Nevada state law,
18 prior to filing its Bankruptcy Petition, which included, but are not limited to:

- 19 a. USACM received full principal payoffs from multiple borrowers, but
20 failed to disburse those funds to the appropriate Direct Lenders (the
21 "Converted Principal"). The total amount of Converted Principal is
22 approximately \$50,000,000.
- 23 b. USACM failed to make any attempt to obtain real estate collateral to
24 secure multiple loans, while at the same time representing to Direct
25 Lenders that their loans were fully secured by valuable real estate.
- 26 c. USACM made monthly interest payments to Direct Lenders on
27 occasions when the borrowers of particular loans in which the Lenders
28 had an interest were not paying USACM (the "Prepaid Interest"). The

1 total amount of Prepaid Interest is approximately \$49,000,000. The
2 payment of Prepaid Interest led Direct Lenders to believe that their
3 loans were properly performing.

4 d. USACM made loans to borrowers who were affiliated or otherwise
5 related to USACM's pre-petition management, such that the borrower
6 entities were partially owned by the owners and officers of USACM
7 through one or more of their various entities. Many of these loans
8 became non-performing loans in that the underlying borrower had not
9 paid the interest due.

10 e. Plaintiffs, or their predecessors in interest, as existing Lenders, and new
11 lenders dating back to January 2005, were fraudulently induced into
12 making new investments and entering into agreements with USACM
13 based on USACM's false misrepresentations regarding the performance
14 of their investments.

15 25. As a result of USACM's fraudulent misrepresentations and conduct, 100% of
16 the portfolio of loans it brokered are in default, while the default rate of commercial loans
17 in default for all commercial banks nationally is approximately 1.5%. Industry averages for
18 principal recovery on defaulted loans is approximately 65%.

19 26. On or about September 22, 2006, USACM filed a *Motion For Order*
20 *Scheduling An Auction For The Sale Of Certain Assets, Appointing SPCP Group, LLC, As*
21 *Lead Bidder, and Approving Bid Procedures And Protections* in its Bankruptcy Case, in
22 which it sought to establish the parameters for the sale of certain assets in the USA
23 Bankruptcy Cases, primarily consisting of valuable assets of a related debtor, the First Trust
24 Deed Fund. The Bankruptcy Court entered and *Order: (A) Scheduling An Auction For The*
25 *Sale Of Certain Assets; (B) Appointing SPCP Group, LLC, As Lead Bidder; And ©*
26 *Approving Bid Procedures And Protections, Approving Bidding Procedures* on November
27 8, 2006. The stalking horse bidder agreed to take on the obligations of USACM under the
28 Loan Servicing Agreements as part of the sale, but did not attribute any of its initial bid price

1 to the Agreements.

2 27. After the Order Scheduling Auction was entered, but prior to the auction being
3 conducted, Mesirow Financial Interim Management ("MFIM"), the Bankruptcy Court
4 appointed management for USACM, prepared calculations of the default interest to be
5 charged to third-party borrowers on monthly invoices or at the time of payoff. MFIM
6 determined that default interest could be charged for substantially all of the loans, and as a
7 result, prepared default interest calculations.

8 28. After the Order Scheduling Auction was entered, but prior to the auction being
9 conducted, Compass submitted a revised Asset Purchase Agreement, which included the sale
10 of additional assets that were not included in the original asset purchase agreement submitted
11 by the stalking horse bidder, specifically, the sale of loan servicing rights, the default rate
12 interest calculated by MFIM, accrued servicing fees, late charges, success fees and other fees
13 due to the loan servicer under the Loan Servicing Agreements.

14 29. The Bankruptcy Court conducted an auction of various assets of the USA
15 Bankruptcy Cases on December 7, 2006. The sale was expressly conditioned upon
16 confirmation of the USACM's Chapter 11 Plan of Reorganization, which was confirmed by
17 an order of the Bankruptcy Court entered on January 8, 2007.

18 30. Compass was the successful bidder at auction and, on February 16, 2007 (the
19 "Closing Date"), acquired substantially all of the assets of USACM and related debtor, the
20 First Trust Deed Fund ("FTDF") in exchange for at \$67 Million. The Compass bid was
21 broken down by an initial bid of \$48 million for the FTDF assets and \$8 million for the loan
22 servicing rights and fees under the Loan Servicing Agreements ("Purchased Assets"). The
23 remaining amounts were to be allocated by an over-bid agreement between FTDF and
24 USCM, which was filed under seal, and a break-up fee of \$1.5 million to the stalking horse
25 bidder. The sale was expressly conditioned upon confirmation of the USACM's Chapter
26 11 Plan of Reorganization, which was confirmed by an order of the Bankruptcy Court
27 entered on January 8, 2007.

28 31. Other than certain conditions, the Loan Servicing Agreements were transferred

1 to Compass without any other modification whatsoever.

2 32. Compass has represented in a declaration by Blatt that it is a national firm with
3 over 200 employees which acquires over \$100 million in loan interests every year.

4 33. Silar, which together with its principals have a substantial background in the
5 lending industry in numerous asset classes, including consumer, residential and commercial,
6 provided financing to Compass for the Purchased Assets, and conducted due diligence in
7 connection with the financing.

8 34. On February 16, 2007, Compass issued a press release in which it stated that
9 the actual value of the assets purchased from USACM and FTDF was more than \$150
10 million. Based on the full note value of \$62,652,742 for the FTDF assets, not taking into
11 account any borrower defaults, it can be deducted that Compass claims over \$87 million in
12 profit to be realized from the loan servicing rights.

13 35. Compass has put into action a strategy to extract value from the collateral
14 pledged by third-party borrowers to Plaintiffs and other direct lenders, by attempting to
15 deduct unpaid default interest and late fees from the collateral proceeds before remitting
16 amounts due to Plaintiffs and other direct lenders, which is in direct conflict with the loan
17 documentation (Notes, deeds of trust and loan agreements), the Loan Servicing Agreements,
18 the intent of the parties to the loans and various related agreements, the historical practices
19 of USACM and long established lending industry standards and practices.

20 36. Compass' strategy and approach for servicing the Loans has created a conflict
21 of interest between Compass and direct lenders, including Plaintiffs, to whom Compass owes
22 fiduciary duties.

23 37. Compass is attempting to further the scheme started by USACM, to profit with
24 no risk, while astronomical risk inures to Plaintiffs and other direct lenders.

25 38. As a purported loan servicer, Compass plays a crucial role in the Loans and its
26 capabilities and experience directly affects the underlying performance of the Loans.

27 39. As a purported loan servicer, Compass acts as an agent to Plaintiffs and other
28 direct lenders and, therefore, Compass assumes fiduciary responsibilities to Plaintiffs and

1 other direct lenders.

2 40. The State of Nevada and its Division of Mortgage Lending, recognizing the
3 responsibilities assumed by a loan servicer to direct lenders, regulates and monitors loan
4 servicing activities pursuant to NRS 645B and NAC 645B.

5 41. Pursuant to NRS 645B.185, each investor in USACM was required to receive
6 and sign a Mortgage Investment Disclosure Form, approved by the Nevada Mortgage
7 Lending Division, a copy of which approved form is attached as Exhibit B.

8 42. As detailed in the Mortgage Investment Disclosure Form, a mortgage
9 broker/agent operating in Nevada is required to inform investors that:

- 10 a. "Before you invest in a promissory note by an interest in real property,
11 you should know... the knowledge, experience and integrity of the
12 mortgage broker with whom you are dealing."
- 13 b. "You are entitled to receive information regarding the mortgage broker
14 you are dealing with" more specifically the most recent financial
15 statements.
- 16 c. "You have a right to ascertain from the Division of Mortgage Lending
17 the results of any investigation against the mortgage broker"
- 18 d. "In many cases, including those cases where the investments consist of
19 "fractionalized" interests, the loan requires servicing by an authorized
20 agent... The mortgage broker with whom you are dealing is authorized
21 by Nevada law to act as the servicing agent."
- 22 e. "A Mortgage Broker performing loan servicing has an obligation to
23 account to the borrower and every investor for money collected and
24 disbursed in the exercise of that function".
- 25 f. When the borrower on a mortgage loan fails to make required
26 payments, the actions and investor can take, or that a servicing agent
27 can take on behalf of an investor, are determined by provisions of
28 Nevada Law and the documents and instruments evidencing the

1 mortgage loan.

2 43. Plaintiffs and other direct lenders did not get the benefit of the Mortgage
3 Investment Disclosure Form as it relates to Compass, nor have they received the required
4 disclosures from Compass, including, but not limited to:

- 5 a. Compass has refused to disclose any compensation they are receiving;
6 b. Plaintiffs and other direct lenders did not have a chance to know
7 anything about Compass prior to Compass being forced upon them as
8 a loan servicer, nor have direct lenders been provided any information
9 regarding Compass since Compass began servicing the Loans;
10 c. Plaintiffs and other direct lenders have not been able to obtain any
11 financial information concerning Compass, yet Compass is being
12 entrusted with nearly \$750 million dollars of direct lenders money,
13 d. Compass has stated that they have no plans to get licensed in Nevada,
14 and have relocated their operations to the State of New York and, as
15 such, plaintiffs and direct lenders are being deprived of all the rights
16 afforded them in connection with making a private investment.

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19
20 44. Nevada Administrative Code section 645B.073(1) provides:
21 Except as otherwise provided in subsection 3, if a mortgage
22 broker acts on behalf of investors on a matter related to a
23 mortgage loan, and if the beneficial interest in the loan belongs
24 to more than one natural person, the documentation of the matter
25 must include provisions to allow the holders of 51 percent or a
26 greater specified percentage of the beneficial interests of record
27 to act on behalf of all the holders of the beneficial interests of
28 record in the event of a default or foreclosure for matters that

1 require the direction or approval of the holders of the beneficial
2 interests in the loan, including, without limitation:

3 (a) The designation of the mortgage broker, servicing
4 agent or other person to act on the behalf of the holders
5 of the beneficial interests in the loan; and

6 (b) The sale, encumbrance or lease of real property
7 owned by the holders resulting from a foreclosure or the
8 receipt of a deed in lieu of a foreclosure.

9 45. Compass is aware of NAC 645B.073 and has attempted to take advantage of
10 its provisions by acquiring 51% of the beneficial interests in certain loans to prevent
11 Plaintiffs and other direct lenders from removing Compass as loan servicer.

12 46. The Loan Servicing Agreements provide for a power of attorney to be granted
13 by Plaintiffs and other direct lenders to USACM, to empower USACM act on behalf of direct
14 lenders in certain matters, thereby creating additional fiduciary duties owed to Plaintiffs and
15 other direct lenders.

16 46. Pursuant to NRS 645B.330, a mortgage broker/agent must act on behalf of
17 direct lenders pursuant to a valid power of attorney, approved by the State of Nevada. In this
18 regard, Plaintiff executed a power of attorney in favor of USACM when making
19 investments/loans. Those powers of attorney expressly expire on the maturity date of each
20 related loan.

21 47. NRS 645B.330 requires that the power of attorney "Expressly provide that the
22 power of attorney is effective only for the term of the specific loan unless the mortgage
23 broker obtains written approval from the private investor to extend the term of the power of
24 attorney..." and "a power of attorney which designates a mortgage broker or mortgage
25 agent as the attorney-in-fact or the agent of a private investor and which violates the
26 provisions of this section is void and must not be given effect with regard to any act or
27 transaction that occurs on or after October 1, 1999, whether or not the power of attorney is
28 or has been executed by the private investor before, on or after October 1, 1999."

1 48. The Powers of Attorney granted by Plaintiffs and other direct lenders to
2 USACM expire as the term of each loan expires, and are now in default. No written
3 extension of any of Plaintiffs' Powers of Attorney have been executed as required by NRS
4 645B.330.

5 49. At the time the Loan Servicing Agreements were transferred to Compass, many
6 of the loans in the USACM loan portfolio were in term default, and others have since gone
7 into term default.

8 50. As a result of the term default of various loans in the USACM portfolio,
9 Compass no longer has a valid power of attorney to act on behalf of direct lenders and, as
10 such, the powers of attorney required under NRS 645B.330 have expired.

11 51. Despite the fact no valid power of attorney exists that authorizes Compass to
12 act on behalf of Plaintiffs and other direct lenders, Compass continues to hold itself out as
13 a representative/agent of Plaintiffs (and other direct lenders) to borrowers, title companies
14 and others. Without the power to do so, Compass has negotiated payoffs, filed lawsuits and
15 executed satisfactions on behalf of Plaintiffs and other direct lenders.

16 52. Compass was not able to obtain a license from the State of Nevada, Mortgage
17 Lending Division, as required by the Asset Purchase Agreement. As a result, in February
18 2007, Compass entered into a sub-servicing agreement with USACM. The sub-servicing
19 agreement, among other things, provided for USACM to provide administrative functions,
20 while negotiations with borrowers, foreclosures, or other legal proceeding were left to
21 Compass.

22 53. In May, 2007, the State of Nevada, Department of Business and Industry,
23 Division of Mortgage Lending entered a formal *Order Revoking Mortgage Broker License*
24 *And Notice of Right To Request Hearing*, pursuant to which USACM license to act as a
25 mortgage broker/agent in Nevada was revoked and in which the State described USACM as
26 "a calculated, self-serving deceptive scheme that was enacted to allow the Principals to
27 potentially profit with no risk, while astronomical risk inured to the unsuspecting lenders."
28 A copy of the *Order Revoking Mortgage Broker License And Notice of Right To Request*

1 *Hearing*, is attached hereto as Exhibit C.

2 54. On May 9, 2007, entered a formal *Order Imposing Fine And Order To Cease*
3 *And Desist And Notice of Right To Request Hearing*, pursuant to which Compass was ordered
4 to cease and desist all mortgage lending/agent activities in Nevada, a copy of which is
5 attached hereto as Exhibit D.

6 55. Compass as enacted policies regarding the allocation of loan proceeds collected
7 at their sole discretion, whether the source of proceeds are from payments made by borrowers
8 or proceeds gained through a sale of the collateral upon foreclosure, which are contrary to
9 the terms of the underlying Notes, deeds of trust and Loan Servicing Agreements, and are
10 unprecedented in the industry.

11 56. Pursuant to Section 5 of the Loan Servicing Agreement, the loan servicer had
12 the right to retain, as compensation for servicing loans, (a) a servicing fee varying between
13 1-3% per annum; (2) any late charges collected from the borrower; and (c) any default
14 interest collected from the borrower pursuant to the terms of the note.

15 57. The loan servicer under the Loan Servicing Agreements is only authorized to
16 retain default interest for itself if the direct lenders exercise their option to charge default
17 interest, and only if default interest is actually collected from the borrower.

18 58. While purportedly acting as Plaintiff's loan servicer under the Loan Servicing
19 Agreements, Compass has effectuated a strategy and approach to sit on collateral for an
20 unknown period of time, in order to allow the accumulation and accrual of default interest,
21 which it can take off the top of any foreclosure proceeds, which leaves Plaintiffs' and other
22 direct lenders' cash investments significantly diminished in value, if not virtually worthless,
23 depending upon how long the delinquent loans are allowed to continue to accrue default
24 interest and late fees without the initiation of foreclosure proceedings.

25 59. The unpaid principal balance on the loans in which Plaintiffs are direct lenders
26 total in excess of \$485 million. The servicing fee and default interest fees that Compass
27 claims it is entitled to accrue in excess of 10% per annum or over \$4 million per month that
28 they choose to do nothing to collect on the loans, to the detriment of Plaintiffs and other

1 direct lenders.

2 60. Compass completed extensive due diligence on the loans in order to formulate
3 their bid for the FTDF assets. Silar was aware of the results of such due diligence.

4 61. In the three months have passed since Compass closed on the asset purchase
5 transaction, Compass has failed to failed to provide monthly reports as required by Nevada
6 law and has only generated a total of seven (7) loan status reports

7 62. Since taking over as loan servicer, Compass has failed to communicate to
8 Direct Lenders certain offers made by borrowers to repay their debt to the Direct Lenders in
9 violation of Nevada law and their fiduciary duties, in order to continue accruing default
10 interest and other fees for its own benefit.

11 63. Since taking over as loan servicer, Compass has negotiated with borrowers for
12 its own benefit, and to the detriment of Direct Lenders, in violation of Nevada law and its
13 fiduciary duties.

14 64. Since taking over as loan servicer, Compass has misrepresented the status of
15 loans to Direct Lenders for the purpose of coercing the direct lenders to agree to
16 modifications to loan documents, resulting in additional undisclosed fees to Compass, which
17 is violation of its fiduciary duties and Nevada law.

18 65. Since taking over as loan servicer, Compass has taken the position that it is
19 entitled to be paid default interest and other fees, prior to Direct Lenders being paid principal
20 and interest.

21 66. Since taking over as loan servicer, Compass has applied principal and interest
22 payments made by borrowers to pay itself so-called loan origination fees.

23 67. Since taking over as loan servicer, Compass has failed to produce, keep and
24 maintain records and reports required by Nevada Revised Statutes, Chapter 645B.

25 68. Since taking over as loan servicer, Compass has struck secret deals with
26 borrowers, pursuant to which Compass received payments from borrowers, when the
27 Plaintiffs and other direct lenders were not receiving full principal and interest payments
28 from the borrower.

1 69. Since taking over as loan servicer, Compass has misrepresented to third parties,
2 including borrowers, title companies and others, that they have the authority to act on behalf
3 of Plaintiffs and other direct lenders.

4 70. Since taking over as loan servicer, Compass has purported to make advances
5 on behalf of Plaintiffs and other direct lenders, which it was not authorized to make.

6 71. Since taking over as loan servicer, Compass has subjected Plaintiffs and other
7 direct lenders to foreclosure and other expenses without the express authorization of
8 Plaintiffs and other direct lenders.

9 72. Since taking over as loan servicer, Compass has engaged in reckless conduct,
10 which has subjected Plaintiffs and other direct lenders to an increased exposure to lender
11 liability lawsuits.

12 73. Since taking over as a loan servicer, Compass has engaged in actions that place
13 direct lenders principal investments/loans at substantial risk, without permission of the direct
14 lender.

15 74. Since taking over as loan servicer, Compass has breached its fiduciary duty to
16 act in the best interest of Plaintiffs and other direct lenders.

17 75. Since taking over as loan servicer, Compass has refused to process direct
18 lender/borrower settlement agreements.

19 76. Since taking over as loan servicer, Compass has used to its benefit, and to the
20 detriment of Plaintiffs and other direct lenders, a three (3) day deadline to respond to loan
21 resolution offers, even when substantially more time was feasible, in violation of its fiduciary
22 duties.

23 77. Since taking over as loan servicer, Compass has had the time and ability to
24 circulate offers to purchase Plaintiffs' and other direct lenders' interests, at substantial
25 discounts, but has not provided sufficient loan status reports for Plaintiffs and other lenders
26 to make informed decisions.

27 78. Since taking over as loan servicer, Compass has advised direct lenders that they
28 do not need an attorney, when an independent attorney is advisable, in violation of its

1 fiduciary duties.

2 79. Based on the various acts on Compass, and Compass alone, and NAC
3 645B.073, Direct Lenders constituting over 51% of the beneficial interests in various loans
4 serviced by Compass have executed written elections pursuant to Section 3 of the Loan
5 Servicing Agreement and NAC 645B.073 to: (1) terminate any rights that Compass may have
6 to service their various Loan; and (2) to appoint an alternate servicing agent for loans.

7 **D. The Standard Property Loan.**

8 80. Each Note executed by borrowers in favor of Plaintiffs and other direct
9 lenders, expressly provides that the lender shall have the option of determining the
10 priority in which payments on each loan are applied. Each Note further provides that the
11 lender shall have the option to charge a default rate of interest in the event of default by
12 the borrower.

13 81. Certain Plaintiffs, and other direct lenders, through USACM, made a direct
14 loan to STANDARD PROPERTY DEVELOPMENT, LLC ("Standard Property"), which
15 loan is commonly known as the Standard Property Loan (hereinafter the "Standard Property
16 Loan"). In connection with the Standard Property Loan, Plaintiffs executed a Power of
17 Attorney, pursuant to which they appointed USACM as their servicer for the Standard
18 Property Loan, governed by the terms of the Loan Servicing Agreement. As of March 15,
19 2007, the total principal balance the Standard Property Loan was \$9,640,000 ("Standard
20 Property Principal Balance").

21 82. On February 27, 2006, Standard Property executed a Promissory Note Secured
22 By Mortgage in favor of certain Plaintiffs and other direct lenders (the "Standard Property
23 Note"), which provides for an interest rate of twelve and one-half percent (12.5%) per
24 annum. Pursuant to Section 4 of the Standard Property Note all payments on the Note were
25 to first be applied toward the payment of accrued interest.

26 83. USACM's right to service the Standard Property Loan on behalf Plaintiffs was
27 transferred to Compass on February 16, 2007.

28 84. Pursuant to Section 3(c)(I) of the Loan Servicing Agreement, the loan servicer

1 is required to proceed diligently to collect all payments due under the terms of the note and
 2 promptly pay the proper parties principal, interest, late charges, insurance and other specified
 3 funds. Pursuant to Section 5 of the Loan Servicing Agreement, USACM as servicer had the
 4 right to retain, as compensation for servicing loans, (a) a servicing fee varying between 1-3%
 5 per annum; (2) any late charges collected from the borrower; and (c) any default interest
 6 collected from the borrower pursuant to the terms of the note.

7 85. On March 7, 2007, Compass, through Mark L. Olson, Director of Investors
 8 Relations for Compass, sent a letter certain Plaintiffs and all other direct lenders in the
 9 Standard Property Loan, in which it sought the approval of 100% of the direct lenders in the
 10 Standard Property Loan of an agreement Compass reached with Standard Property to pay off
 11 the Standard Property Loan. According to that letter, the terms of the payoff included:

- 12 a. The Direct Lenders in the loan receive 100% of their unpaid Standard
- 13 Property Principal Balance;
- 14 b. The Direct Lenders do not receive any accrued interest; and
- 15 c. Compass shall release the security interest against Standard Property's
- 16 real property.

17 86. In reliance on the representations of Compass in the March 7, 2007, letter,
 18 certain Plaintiffs and other direct lenders constituting 100% of the beneficial interest in the
 19 Standard Property Loan approved the payoff in accordance with the specific terms of the
 20 March 7, 2007, letter.

21 87. On or about March 13, 2007, USACM, through Mark L. Olson, COO, issued
 22 a Payoff Statement to Standard Property (the "Standard Property Payoff Statement"), which
 23 required Standard Property to make a payoff, as of March 15, 2007, in the amount of
 24 \$10,499,068 with a per diem interest accrual of \$2,205.74 for every day after March 15,
 25 2007. The \$10,499,068.15 payoff consisted of:

- 26 a. Standard Property Principal Balance: \$ 9,640,000.00
- 27 b. Late Fees: \$ 47,694.43
- 28 c. Other Fees: \$ 267,164.11

1 d. Default Interest \$ 544,509.60

2 88. The Standard Property Payoff Statement revealed that Compass had a secret
3 agreement with Standard Property, undisclosed to the Standard Property Loan Direct
4 Lenders, whereby Compass received Late Fees, Other Fees and Default Interest from
5 Standard Property, without collecting accrued contractual interest owed to the Direct
6 Lenders.

7 89. On or about March 15, 2007, Standard Property paid off the Standard Property
8 Loan pursuant to the terms of the Standard Property Payoff Statement. At the time the
9 Standard Loan was paid off, Compass did not pay the Standard Property Loan direct lenders
10 any of the accrued interest they were owed, but took the available funds pay themselves
11 default interest, late fees and other fees totaling \$859,368.14.

12 90. At the time the Standard Loan was paid off, Compass and Silar directed the
13 escrow company to wire \$859,068.14 of Plaintiffs and other direct lenders principal loan
14 proceeds directly to Silar.

15 **CLAIMS FOR RELIEF**

16 **FIRST CLAIM FOR RELIEF**

17 **(Declaratory Relief)**

18 91. Plaintiffs reallege and incorporate by reference each and every allegation
19 contained in paragraphs 1 through 90 as though fully set forth herein.

20 92. An actual, ripe, and justiciable controversy has arisen and now exists between
21 the Plaintiffs and Compass as follows:

22 a) Plaintiffs contend that pursuant to NAC 645B.073, Plaintiffs and other
23 direct lenders have an absolute right to replace Compass as loan
24 servicer in any loan provided 51% of the beneficial interests of the
25 Loan have made the decision to do so. Compass contends that it cannot
26 be terminated as loan servicer based solely on NAC 645B.073.

27 b) Plaintiffs contend that payments made by borrowers are first to be
28 applied to accrued non-default rate interest and then to principal, and

1 then to default interest and late fees, which priority may only be altered
2 by the direct lenders in each loan. Compass contends that all payments
3 by borrowers are first applied to pay Compass default interest and late
4 fees.

5 c) Plaintiffs contend that a lender in a loan secured by real property has an
6 absolute right to modify the terms of their promissory note and deed of
7 trust to maximize their recovery, irrespective of the rights of any third-
8 party loan servicer. Compass contends that Plaintiffs have no right to
9 modify the terms of their note and deed of trust with the third-party
10 borrower.

11 d) Plaintiffs contend that as a result of the maturity of various loans in the
12 USACM portfolio, Compass no longer has a valid power of attorney to
13 act on behalf of Plaintiffs on such Loans, as is required by NRS
14 645B.330. Compass maintains that it still has the power and authority
15 to act on Plaintiff's behalf.

16 e) Plaintiffs contend that pursuant to the Notes executed by third-party
17 borrowers in favor of Plaintiffs and other direct lenders, the direct
18 lenders have the right to determine the priority of allocating payments
19 made by the third-party borrower. Compass maintains that it, as the
20 loan servicer, has the right to determine the priority of allocating
21 payments.

22 f) Plaintiffs contend that, based upon Compass' breaches of the Loan
23 Servicing Agreements, upon termination of the Loan Servicing
24 Agreement Compass is not entitled to any compensation provided for
25 in section 5 of the Loan Servicing Agreements. Plaintiff are informed
26 and believe that Compass contends that it has an absolute right to
27 collect default interest.

28 g) Plaintiffs contend that they are entitled to terminate their Loan

1 Servicing Agreements with Compass by virtue of Compass' actions in
2 connection with certain loans, as detailed above. Plaintiffs are
3 informed and believe that Compass contends that Plaintiffs are not
4 entitled to terminate the Loan Servicing Agreements.

5 93. A determination of the disputes set forth in paragraph 92, above, is necessary
6 and appropriate at this time in order to resolve the adverse interests of Plaintiffs and
7 Compass.

8 WHEREFORE, Plaintiffs respectfully request judgment as set forth below.

9 **SECOND CLAIM FOR RELIEF**

10 **(Breach of Contract)**

11 94. Plaintiffs reallege and incorporate by reference each and every allegation
12 contained in paragraphs 1 through 93 as though fully set forth herein.

13 95. Plaintiffs have performed all of her obligations under the Loan Servicing
14 Agreement.

15 96. Compass breached the Loan Servicing Agreement by:

- 16 a. failing to pay accrued contractual interest to Plaintiffs;
- 17 b. failing to communicate to Plaintiffs certain offers made by
18 borrowers to repay their debt to the Direct Lenders;
- 19 c. negotiating with borrowers for its own benefit, and to the
20 detriment of Plaintiffs;
- 21 d. misrepresenting the status of loans to Plaintiffs;
- 22 e. taking funds that were available to pay accrued interest to
23 Plaintiffs to pay itself Default Interest, Late Fees and Other Fees;
- 24 f. applying principal and interest payments made by borrowers to
25 pay itself so-called loan origination fees;
- 26 g. failing to produce, keep and maintain appropriate accounting
27 records on each loan as required by section 2(b) of the Loan Servicing Agreements;
- 28 h. striking secret deals with borrowers, pursuant to which Compass

1 received payments from borrowers, when the Plaintiffs and other direct lenders were not
2 receiving full principal and interest payments from the borrower; and

3 i. failing to promptly pay Plaintiffs principal and interest as
4 required by section 2(c)(I) of the Loan Servicing Agreements.

5 97. Compass breached the Loan Servicing Agreements, which are expressly
6 governed by Nevada law, because Compass is not licensed as a mortgage broker/agent in
7 Nevada.

8 98. Compass breached the Loan Servicing Agreements, which are expressly
9 governed by Nevada law, because Compass has been ordered by the State of Nevada cease
10 and desist the performance of its obligations under the Loan Servicing Agreements and,
11 therefore, Compass is unable to lawfully perform its required services under the Loan
12 Servicing Agreement.

13 99. As a result of Compass' breaches of the Loan Servicing Agreement, Plaintiffs
14 suffered damages in an amount to be proven at trial.

15 WHEREFORE, Plaintiffs respectfully request judgment as set forth below.

16 **THIRD CLAIM FOR RELIEF**

17 **(Breach of Fiduciary Duty)**

18 100. Plaintiffs reallege and incorporate by reference each and every allegation
19 contained in paragraphs 1 through 99 as though fully set forth herein.

20 101. Compass owed a fiduciary duty to Plaintiffs as a loan servicer under the Loan
21 Servicing Agreements.

22 102. Compass breached its fiduciary duty to Plaintiffs by:

- 23 a. failing to pay accrued contractual interest to Plaintiffs;
24 b. failing to communicate to Plaintiffs certain offers made by
25 borrowers to repay their debt to the Direct Lenders;
26 c. negotiating with borrowers for its own benefit, and to the
27 detriment of Plaintiffs;
28 d. misrepresenting the status of loans to Plaintiffs;

1 e. taking funds that were available to pay accrued interest to
2 Plaintiffs to pay itself Default Interest, Late Fees and Other Fees;

3 f. applying principal and interest payments made by borrowers to
4 pay itself so-called loan origination fees;

5 g. by striking secret deals with borrowers, pursuant to which
6 Compass received payments from borrowers, when the Plaintiffs and other direct lenders
7 were not receiving full principal and interest payments from the borrower; and

8 h. by collecting Default Interest, Late Fees and Other Fees on its
9 own behalf, without collecting accrued non-default interest on behalf of Plaintiffs.

10 103. As a result of Compass breaching its fiduciary duty to Plaintiffs, Plaintiffs has
11 suffered damages in an amount to be proven at trial in this matter.

12 WHEREFORE, Plaintiffs respectfully request judgment as set forth below.

13 ///

14 ///

15 **FOURTH CLAIM FOR RELIEF**

16 **(Tortious Breach of the Implied Covenant of Good Faith and Fair Dealing)**

17 104. Plaintiffs reallege and incorporate by reference each and every allegation
18 contained in paragraphs 1 through 103 as though fully set forth herein.

19 105. Compass owed Plaintiffs a duty of good faith and fair dealing arising from the
20 Loan Servicing Agreement.

21 106. Plaintiffs imposed a special element of reliance in Compass as their loan
22 servicer, who stands in a superior and entrusted position in connection with Compass'
23 negotiation of the payoff of the Standard Property Loan and in performing all other services
24 under the Loan Servicing Agreement.

25 107. Compass breached the duty of good faith and fair dealing it owed to Plaintiffs
26 by:

27 a. failing to pay accrued contractual interest to Plaintiffs;

28 b. failing to communicate to Plaintiffs certain offers made by

- 1 borrowers to repay their debt to the Direct Lenders;
- 2 c. negotiating with borrowers for its own benefit, and to the
- 3 detriment of Plaintiffs;
- 4 d. misrepresenting the status of loans to Plaintiffs;
- 5 e. taking funds that were available to pay accrued interest to
- 6 Plaintiffs to pay itself Default Interest, Late Fees and Other Fees;
- 7 f. applying principal and interest payments made by borrowers to
- 8 pay itself so-called loan origination fees;
- 9 g. by striking secret deals with borrowers, pursuant to which
- 10 Compass received payments from borrowers, when the Plaintiffs and other direct lenders
- 11 were not receiving full principal and interest payments from the borrower; and
- 12 h. by collecting Default Interest, Late Fees and Other Fees on its
- 13 own behalf, without collecting accrued non-default interest on behalf of Plaintiffs.

14 108. Plaintiffs suffered damages in an amount to be proven at trial as a result of

15 Compass breaching the duty of good faith and fair dealing it owed to her.

16 WHEREFORE, Plaintiffs respectfully request judgment as set forth below.

17 **FIFTH CLAIM FOR RELIEF**

18 **(Constructive Fraud)**

19 109. Plaintiffs realleges and incorporates by reference each and every allegation

20 contained in paragraphs 1 through 108 as though fully set forth herein.

21 110. Compass owed Plaintiffs legal and equitable duties arising from their fiduciary

22 and confidential relationship.

23 111. Compass breached its duties to Plaintiffs by misrepresenting the actual

24 negotiated terms of loan payoffs.

25 112. Compass breached its duties to Plaintiffs by concealing material terms of the

26 loan payoffs.

27 113. Compass breached its duties to Plaintiffs by misrepresenting the terms of

28 payoff compromise offers made by borrowers.

1 114. Compass breached its duties to Plaintiffs by concealing the terms of payoff
2 compromise offers made by borrowers.

3 115. Plaintiffs suffered damages in an amount to be proven at trial as a result of
4 Compass' constructive fraud.

5 WHEREFORE, Plaintiffs respectfully request judgment as set forth below.

6 **SIXTH CLAIM FOR RELIEF**

7 **(Fraudulent Misrepresentation)**

8 116. Plaintiffs reallege and incorporate by reference each and every allegation
9 contained in paragraphs 1 through 115 as though fully set forth herein.

10 117. Compass made false representations to Plaintiffs regarding the negotiated terms
11 of the Standard Loan payoff.

12 118. Compass knew or believed that is representations regarding the Standard Loan
13 payoff were false.

14 119. Compass intended to induce Plaintiffs to act upon its misrepresentation by
15 approving the Standard Loan payoff.

16 120. Plaintiffs justifiably relied on Compass' misrepresentations and approved the
17 Standard Loan payoff.

18 121. As a result of Compass' fraudulent misrepresentation, Plaintiffs suffered
19 damages in an amount to be proven at trial.

20 WHEREFORE, Plaintiffs respectfully request judgment as set forth below.

21 **SEVENTH CLAIM FOR RELIEF**

22 **(Conversion)**

23 **(Compass)**

24 122. Plaintiffs reallege and incorporate by reference each and every allegation
25 contained in paragraphs 1 through 121 as though fully set forth herein.

26 123. Compass has wrongfully exerted domain and control over principal loan
27 proceeds from third-party borrowers, which proceeds belong to Plaintiffs and other direct
28 lenders.

1 124. Compass' taking of Plaintiffs' principal loan proceeds is inconsistent with
2 Plaintiffs' right, title and interest in those proceeds.

3 125. Compass' taking of Plaintiff's loan proceeds is in derogation, exclusion and
4 defiance of Plaintiffs' right, title and interest in those proceeds.

5 WHEREFORE, Plaintiffs respectfully request judgment as set forth below.

6 **EIGHTH CLAIM FOR RELIEF**

7 **(Conversion)**

8 (Silar)

9 126. Plaintiffs reallege and incorporate by reference each and every allegation
10 contained in paragraphs 1 through 125 as though fully set forth herein.

11 127. Silar has wrongfully exerted domain and control over principal loan proceeds
12 from the Standard Loan Payoff belonging to Plaintiffs and other direct lenders.

13 128. Silar's taking of Plaintiffs' Standard Loan proceeds is inconsistent with
14 Plaintiffs' right, title and interest in those proceeds.

15 129. Silar's taking of Plaintiff's Standard Loan proceeds is in derogation, exclusion
16 and defiance of Plaintiffs' right, title and interest in those proceeds.

17 WHEREFORE, Plaintiffs respectfully request judgment as set forth below.

18 **NINTH CLAIM FOR RELIEF**

19 **(Civil Conspiracy)**

20 (All Defendants)

21 130. Plaintiffs reallege and incorporate by reference each and every allegation
22 contained in paragraphs 1 through 129 as though fully set forth herein.

23 131. Silar had knowledge of Compass business plan when it financed the purchase
24 of the Loan Servicing Agreements.

25 132. Silar had knowledge of Plaintiffs and other direct lenders' rights when it took
26 proceeds from the Standard Loan Payoff.

27 133. Piskun and Blatt, the principals and beneficiaries of Compass, formed and
28 operate Compass for the purpose of conducting activities prohibited by Nevada law.

1 134. Compass, Piskun, Blatt and Silar, by acting in concert, intended to accomplish
2 an unlawful objective for the purpose of harming Plaintiffs and other direct lenders, as
3 detailed above and incorporated herein.

4 135. Plaintiffs have suffered damages resulting from the concerted acts of Compass,
5 Piskun, Blatt and Silar,

6 WHEREFORE, Plaintiffs respectfully request judgment as follows:

- 7 a. For a declaration by this Court that Plaintiffs, together with other direct
8 lenders making up 51% of the beneficial interests of any loan, have the
9 absolute right under NAC 645B.073 to terminate Compass as loan
10 servicer for each loan and to designate a new loan servicer;
- 11 b. For a declaration of this Court that Compass' actions related to the
12 Standard Property Loan entitles Plaintiffs to terminate the Loan
13 Servicing Agreement as it applies to all loans in which Plaintiffs are
14 direct lenders;
- 15 c. For a declaration of this Court that Plaintiffs and other direct lenders
16 have an absolute right to modify the terms of their promissory note and
17 deed of trust with the third-party borrower to maximize their recovery;
- 18 d. For a declaration of this Court that as a result of the maturity of various
19 loans in the USACM portfolio, Compass has never had a valid power
20 of attorney to act on behalf of Plaintiffs on such Loans, as is required
21 by NRS 645B.330.
- 22 e. For a declaration that Plaintiffs and other direct lenders have the right
23 to determine the priority of allocating payments made by any third-party
24 borrower, and that Compass has no such right.
- 25 f. For a declaration by this Court that Compass is not entitled to any
26 compensation under section 5 of the Loan Servicing Agreements;
- 27 g. For a declaration that Plaintiffs are entitled to terminate Compass as
28 servicer on any loan based upon breaches of the Loan Servicing

1 Agreement by Compass;

- 2 h. For a declaration that payments made by borrowers on loans shall first
3 be applied to accrued non-default rate interest, then to principal, and
4 then to accrued default interest and late fees, subject only to the rights
5 of direct lenders on a specific loan to designate a different sequence of
6 payment;
- 7 i. For an award of damages against Compass in an amount in excess of
8 \$75,000, to be proven at trial in this matter;
- 9 j. For an award of damages against Silar in an amount excess of \$75,000,
10 to be proven at trial in this matter;
- 11 k. For an award of damages against Blatt in an amount excess of \$75,000,
12 to be proven at trial in this matter;
- 13 l. For an award of damages against Piskun in an amount excess of
14 \$75,000, to be proven at trial in this matter;
- 15 m. For an award of punitive damages;
- 16 n. For an award of reasonable attorneys' fees;
- 17 o. For costs of suit incurred herein; and
- 18 p. For such other and further relief as this Court deems just and proper.

19 **DATED** this 21st day of May, 2007.

20 LAW OFFICES OF ALAN R. SMITH

21 By: /s/ Kevin A. Darby, Esq.

22 ALAN R. SMITH, ESQ.
23 KEVIN A. DARBY, ESQ.
24 Attorney for Plaintiffs
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JS 44 (Rev. 11/04)

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

I. (a) PLAINTIFFS 3685 San Fernando Lenders, LLC, et al.		DEFENDANTS Compass USA SPE, LLC, et al.	
(b) County of Residence of First Listed Plaintiff <u>Washoe</u> (EXCEPT IN U.S. PLAINTIFF CASES)		County of Residence of First Listed Defendant <u>New York</u> (IN U.S. PLAINTIFF CASES ONLY)	
(c) Attorney's (Firm Name, Address, and Telephone Number)		Attorneys (If Known) Peter Bernard, Esq. Bullivant Houser Bailey PC 3980 Howard Hughes Pkwy, Ste. 550 Las Vegas, NV 89169	

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)	III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)		
<input type="checkbox"/> 1 U.S. Government Plaintiff <input type="checkbox"/> 2 U.S. Government Defendant <input type="checkbox"/> 3 Federal Question (U.S. Government Not a Party) <input checked="" type="checkbox"/> 4 Diversity (Indicate Citizenship of Parties in Item III)	<table style="width:100%;"> <tr> <td style="width:50%;"> Citizen of This State <input checked="" type="checkbox"/> 1 Citizen of Another State <input type="checkbox"/> 2 Citizen or Subject of a Foreign Country <input type="checkbox"/> 3 </td> <td style="width:50%;"> DEF <input type="checkbox"/> 1 Incorporated or Principal Place of Business in This State <input type="checkbox"/> 4 Incorporated and Principal Place of Business in Another State <input type="checkbox"/> 5 Foreign Nation <input type="checkbox"/> 6 </td> </tr> </table>	Citizen of This State <input checked="" type="checkbox"/> 1 Citizen of Another State <input type="checkbox"/> 2 Citizen or Subject of a Foreign Country <input type="checkbox"/> 3	DEF <input type="checkbox"/> 1 Incorporated or Principal Place of Business in This State <input type="checkbox"/> 4 Incorporated and Principal Place of Business in Another State <input type="checkbox"/> 5 Foreign Nation <input type="checkbox"/> 6
Citizen of This State <input checked="" type="checkbox"/> 1 Citizen of Another State <input type="checkbox"/> 2 Citizen or Subject of a Foreign Country <input type="checkbox"/> 3	DEF <input type="checkbox"/> 1 Incorporated or Principal Place of Business in This State <input type="checkbox"/> 4 Incorporated and Principal Place of Business in Another State <input type="checkbox"/> 5 Foreign Nation <input type="checkbox"/> 6		

IV. NATURE OF SUIT (Place an "X" in One Box Only)				
CONTRACT <input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input checked="" type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	TORTS PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury PERSONAL INJURY <input type="checkbox"/> 362 Personal Injury - Med. Malpractice <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	FORFEITURE/PENALTY <input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 R.R. & Truck <input type="checkbox"/> 650 Airline Regs. <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 690 Other LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act	BANKRUPTCY <input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	OTHER STATUTES <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes
REAL PROPERTY <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	CIVIL RIGHTS <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 440 Other Civil Rights	PRISONER PETITIONS <input type="checkbox"/> 510 Motions to Vacate Sentence Habeas Corpus: <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition		

V. ORIGIN (Place an "X" in One Box Only)							
<input checked="" type="checkbox"/> 1 Original Proceeding	<input type="checkbox"/> 2 Removed from State Court	<input type="checkbox"/> 3 Remanded from Appellate Court	<input type="checkbox"/> 4 Reinstated or Reopened	<input type="checkbox"/> 5 Transferred from another district (specify)	<input type="checkbox"/> 6 Multidistrict Litigation	<input type="checkbox"/> 7 Appeal to District Judge from Magistrate Judgment	

VI. CAUSE OF ACTION	Cite the U.S. Civil Statute under which you are filing. (Do not cite jurisdictional statutes unless diversity): 28 USC 2201, et seq., 28 USC 1332, NRS 645B, NAC 645B Brief description of cause: Declaratory Relief and Damages
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VII. REQUESTED IN COMPLAINT:	<input type="checkbox"/> CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23 DEMAND \$ _____ CHECK YES only if demanded in complaint: JURY DEMAND: <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
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VIII. RELATED CASE(S) IF ANY	(See instructions): JUDGE _____ DOCKET NUMBER _____
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DATE May 21, 2007	SIGNATURE OF ATTORNEY OF RECORD
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FOR OFFICE USE ONLY			
RECEIPT # _____	AMOUNT _____	APPLYING IFP _____	JUDGE _____ MAG. JUDGE _____